FACT SHEET ------- NPDES Permit Backlog Reduction

What Is the NPDES Permit Backlog?

The Clean Water Act (CWA) specifies that National Pollutant Discharge Elimination System (NPDES) permits may not be issued for a term longer than five years. Permittees that wish to continue discharging beyond the five year term must submit a complete application for permit renewal at least 180 days prior to the expiration date of their permit. If the permitting authority receives a complete application, but does not reissue the permit prior to the expiration date, the permit may be "administratively continued." Permits that have been administratively continued beyond their expiration date are considered to be "backlogged." Where information is available, facilities awaiting their first NPDES permits are also considered part of the NPDES permit backlog.

Why is the NPDES Permit Backlog a Problem?

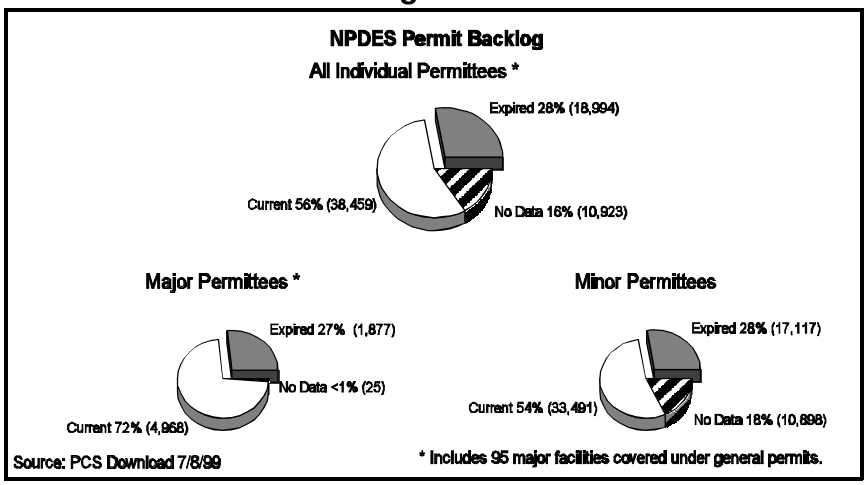
The NPDES regulations, and most State permitting regulations, provide that a permit may be administratively continued if a complete application has been provided by the permittee at least 180 days prior to the permit expiration date. While the permit is continued, all permit conditions remain in effect, and all violations of the permit's terms and conditions are fully enforceable. Thus, if the continued permit contains all appropriate terms and conditions, no consequence to public health or the environment should occur due to the extension.

However, the conditions upon which the existing permit is based may have changed since the permit was issued. Changed conditions may include expansions or changes to the facility's operation, promulgation of technology-based or water quality-based standards, or development of a basin plan or total maximum daily load (TMDL), each of which may affect the facility's effluent limits. In this case, the administratively continued permit would not contain terms and conditions based on the most recent standards, in effect delaying prospective environmental improvements to the nation's waters and possibly continuing deleterious effects.

What Data are Available to Quantify the NPDES Permit Backlog?

Statistics on the permit backlog may be obtained through queries of permit expiration dates from EPA's Permit Compliance System (PCS) database. Using PCS, national backlog statistics are available for all major facilities and those minor facilities covered by individual permits. Figure 1 provides a graphical representation of these data. As indicated in this figure, approximately 18 percent of the minor facilities (with individual permits) do not have expiration dates recorded in PCS (shown as "no data"). Preliminary information provided by States and EPA Regions indicates that most of these "no data" facilities represent situations where applications were submitted, but permits were not issued. However, some of these records also represent missing data (i.e., the State or EPA failed to record an expiration date in PCS). Efforts are underway to better define this segment of the backlog.

Figure 1



What are the Causes of the NPDES Permit Backlog?

Discussions with States and EPA Regions indicate that the permit backlog has increased for a variety of reasons. These include (in no specific order):

- The universe of facilities requiring NPDES permit coverage is expanding at the same time that previously issued permits are expiring.
- State and Regional resources dedicated to permit issuance have been static or declining in concomitance with the expanding universe of facilities.
- State environmental agencies are challenged by implementing other competing regulations.
- Focus on new program initiatives has resulted in less oversight of the base NPDES Program.
- NPDES permits have become increasingly complex due to State adoption of numeric water quality standards, TMDL requirements, and more comprehensive effluent guidelines.
- Due to decreasing permit resources and movement of staff to other program areas, it has been difficult for States and Regions to maintain technical experts on their permits staff.
- States have begun shifting to a watershed approach for permit issuance, which may increase backlogs to allow alignment of five-year permit cycles within watershed boundaries.

What Level of Backlog Is Acceptable?

The goals established by EPA acknowledge some minimal backlog levels, but strive to keep permit issuance at an acceptable rate. Because backlog reduction, the NPDES program's long-term viability, and protection of human health and the environment are inherently linked, EPA has established the following quantitative targets for reducing the backlog:

- The backlog of major permits will be reduced to 20 percent in all States by the end of calendar year 1999
- The backlog of major permits will be reduced to 10 percent in all States by the end of calendar year 2001
- The backlog for all permits will be reduced to 10 percent by the end of calendar year 2004

It should be noted that a factor in reducing current backlog rates are permits that will expire in the near term. Clearly, an integrated and consistent strategy will be necessary to reach these targets and achieve the goals identified above.

What are the Goals for Permit Issuance and Backlog Reduction?

Based on input from EPA's backlog reduction team, EPA Regional permits staff, and State permitting authorities, the goals identified to date include the following.

- Maintain and enhance existing databases to more accurately characterize backlog rates. Having an accurate inventory of the universe of NPDES permittees is important when formulating informed strategies and tracking progress. Therefore, one of EPA's primary goals is to provide assistance to States and EPA Regions to improve the accuracy of PCS data.

- Improve permit backlog percentages while assuring high quality, environmentally protective permits. NPDES permits should integrate all applicable technology and water quality standards to address the ultimate goal of the CWA; to optimize water quality protection. The backlog reduction effort, therefore, must ensure permit quality as well as quantity, and must not hinder State and EPA Regional efforts to issue high quality permits.

- Focus on permits that need to be reissued using a prioritization approach. Instead of relying on the major/minor distinction, backlogged permits should be prioritized based on reissuance "need" by targeting permits that have not incorporated the latest standards or are located in waterbodies that are currently impaired. Procedures could also be developed to streamline the reissuance process for those permits that do not require significant revisions.

- Advocate programmatic changes to streamline permit issuance. NPDES program managers and permit writers have identified opportunities to streamline permit issuance by making programmatic changes - with the intent of improving the sustainability of the NPDES Program. For example, a ten year permit cycle for some types of facilities, or a highly streamlined permit re-issuance process, may be appropriate to ensure a sustainable NPDES program.